that though the charges were to some extent defective I am bound to hold by reason of Section 422 of the Criminal Procedure Code that the defect although an irregularity could not possibly be said to have occasioned a failure of justice and therefore that it was an irregularity which was not fatal to the subsequent proceedings. The accused clearly had full information as to what was charged against them and I do not see how they could possibly have been misled. On the ground of the charge being defective, therefore, the appeal must fail.

With regard to the evidence, however, the case is otherwise. The evidence against the two appellants is that in broad daylight they were riding on their bicycles along the road leading from the estate on which they are employed as rubber tappers and each of them was carrying on the back of her bicycle a sack containing a large quantity of scrap rubber. They were seen by two Police Officers who for some purpose or another were in hiding in the neighbourhood of the road and they were stopped. There was nothing more. It is true that at the trial they told some of the silliest lies that have ever been told in a Magistrate's Court in this country. But this is beside the point. To my mind, they should never have been put upon their defence.

I am not prepared to discuss the nature or the quantum of the evidence that is necessary to establish the condition which effects a reversal of the onus of proof under the Regulation, that is, that the rubber must be reasonably suspected of being stolen. I am inclined to think very little evidence will suffice to do so. But there must be something objective, some circumstances which the Court of trial accepts as being sufficient in all the circumstances of the case to create a reasonable suspicion. In this case there was nothing of the sort.

Accordingly, I must hold that the Prosecution did not make out their case and they did not take it to the stage where the onus of proof passed to the accused persons.

The appeal, therefore, must succeed.

The convictions are set aside and in each case an order of acquittal and discharge entered.

Appeal allowed.

Solicitors for the appellants: *S. Seenivasagam & Sons.*

ABDUL SALAM v. PUBLIC PROSECUTOR

[A. Cr. J. (Thomson J.) April 20, 1955]

[Ipoh — Criminal Appeal No. 18 of 1955]

Food Control Proclamations, 1945 — Ration Documents Regulations, 1948, regs. 5(1) and 15(d) — Ration cards — Retention by store-proprietor without Controller's consent — Whether contrary to reg. 15(d).

The appellant, a provision store-proprietor, was convicted and sentenced to a fine of $1,000 or 4 months imprisonment in default of payment, for retaining 22 ration cards belonging to his registered customers without a written consent from the Asst. Controller of Supplies, an offence under reg. 15(d) of the Ration Documents Regulations.

The terms of the Ration Documents Regulations provide for regulating the retail sale of certain foodstuffs by means of a system of ration cards. Reg. 5 reads as follows: "A ration document shall be available for lawful use only — (i) when retained or used by or on behalf of the person to whom it is issued and for the purpose of obtaining rationed food for him or on his behalf: provided that it may not be retained by a retailer except with the written consent of the Controller of Supplies; (ii) while such person is living and is in the Federation." By reg. 7 every ration document remains the property of the Food Controller "but the person to whom a ration document is issued shall be entitled to its custody and shall be responsible for its safe custody." The regulation under which the appellant was convicted reads as follows: "15. A person shall not: . . . . . (d) retain any such ration document when he has no right to retain it or fail to comply with any directions with regard thereto; . . . . . "

Held: although reg. 5(1) prohibits retention by a retailer without a written consent of the Controller of Supplies, reg. 7 does not prohibit the person to whom the ration document is issued to entrust its custody to another person. Therefore the bare retention of ration cards by a retailer with the knowledge and consent of the holders is no offence under the Regulations.

MAGISTRATE'S CRIMINAL APPEAL.

Meera Hussain for the appellant.

I. Talog Davies (Federal Counsel) for the respondent.

Thomson J. : — The appellant in this case was convicted in the Magistrate's Court at Sungei Siput of an offence in contravention of the Ration Documents Regulations, 1948, made in pursuance of the Food Control Proclamation, 1945, and sentenced to a fine of $1,000 or 4 months imprisonment in default of payment. Against that conviction and sentence he has now appealed.

The relevant facts are not in dispute. The appellant is a shop-keeper who sells retail rice which, I am told, is a rationed food. On 5th November, 1954, his premises were visited by a Food Control Inspector and he was found to be in possession of twenty-one Ration Cards belonging to customers residing in the same village.

The charge was in the following terms:

"That you on 5.11.54 at about 11.20 a.m. being the proprietor of the Medinah Store, 305 Jalong New Village, Sungei Siput, licensed to deal in controlled foodstuffs, to wit rice, did retain 22 (twenty-two) ration cards belonging to your registered customers without a written consent from the Asst. Controller of Supplies, Perak, as per Reg. 5(1) of the Ration Documents Regulations No. 66/48 as amended by L.N. 226 of 14.4.54, and that you did thereby commit an offence under Reg. 15(d) of

the said Regulations No. 66/48, which offence is punishable under s. 17(1) of the Food Control Proclamation No. 10/45."

I do not propose to discuss the wording of that charge except to observe that had the prosecuting officer and the Magistrate given heed to the advice I have frequently given in the past to make some attempt to frame charges in accordance with the wording of the statutory provision which is alleged to have been contravened they would have realised that the case presented difficulties of which they seem to have been completely oblivious.

In general terms the Ration Documents Regulations would seem to provide for regulating the retail sale of certain foodstuffs, which nowadays in practice I am told means certain types of rice, by means of a system of ration cards. By Regulation 4 rationed food may be obtained and supplied "only by means of a ration document available for lawful use and lawfully used." This somewhat cryptic provision is to some extent explained by the terms of Regulation 5 which reads as follows:—

"A ration document shall be available for lawful use only—

(i) when retained or used by or on behalf of the person to whom it is issued and for the purpose of obtaining rationed food for him or on his behalf: provided that it may not be retained by a retailer except with the written consent of the Controller of Supplies;

(ii) while such person is living and is in the Federation."

By Regulation 7 every ration document remains the property of the Food Controller "but the person to whom a ration document is issued shall be entitled to its custody and shall be responsible for its safe custody." The only other Regulation relevant to the present case, and it is the one under which the appellant has been convicted, is 15(d) which reads as follows:—

"15. A person shall not:

.....

(d) retain any such ration document when he has no right to retain it or fail to comply with any directions with regard thereto;

....."

The word "such" in this last Regulation is pure surplusage and can be safely disregarded.

The interpretation placed upon the Regulations quoted by the Prosecution and which was accepted by the Magistrate, although he does not seem to have given the matter much consideration, is that if a retailer retains in his possession ration cards belonging to his customers without the written consent of the Controller of Supplies he is guilty of an offence under Regulation 15(d) which is punishable under Section 17 of the original Proclamation.

This may or may not have been the intention of the functionary who made the Regulations but if it was then in my judgment he has failed to express it. By Regulation 7 a person to whom a ration card is issued is entitled to its custody and is responsible for its safe custody but there is nothing in that Regulation which prohibits his entrusting its custody to another person. That being so, if the holder does entrust the custody of the card to another person I fail to see that that other person has "no right" to retain it so long as he, retains it with the full knowledge and consent of the holder. And it does not seem to me to affect the issue whether the person who is entrusted with the custody of the card is a retailer or a member of the holder's family or anybody else. It is true that Regulation 5 says that if the person who retains it is a retailer, and if he retains it without the written consent of the Controller of Supplies, the card is "not available for lawful use." That may or may not mean that if any use is made of the card when in such custody such use is unlawful and it may or not be that the use of a card which is thereby made unlawful constitutes some sort of offence. It is clear, however, that bare retention of ration cards by a retailer with the knowledge and consent of the holders is no offence under the Regulations and that in the present case the appellant has been convicted of something which is not an offence known to the law.

Before departing from the case, I would repeat with regard to the wording of Regulations 5 and 15(d) certain words which I used with reference to Regulation 14(1) as long ago as December, 1948, (Perak Criminal Appeal No. 78 of 1948) words, I would add, that seem to have fallen on deaf ears. What I said was this:—

"I fail to see that these words create any offence. I fail, moreover, to see how they could even be supposed to create any offence save on the principle still fortunately alien to any system of law based on the English Law that anything the subject does which is not expressly authorised by the terms of some statute constitutes an offence. If the Legislature wishes that principle to be applied to the construction of statutes it should say so and say so in terms. But until it does say so, the subject should not be called upon, as in this case, to defend himself against charges which can only be made out by its importation."

The appeal is allowed and the conviction is set aside. There will be an order for the refund of the fine if it has been paid.

Appeal allowed.

Solicitors for the appellant: *Leong Yew Koh & Co.*

SADHU SINGH v. SELLATHURAI

[A. C. J. (Thomson J.) April 1, 1955]

[Ipoh — Civil Appeal No. 2 of 1955]

Moneylenders Ordinance, 1951, ss. 2(c), 3, 5 and 15 — Moneylender unlicensed at time of making loan — Whether debarred from enforcing contract for repayment.

In this case the appellant sued the respondent for $2,000 on a cheque, given to him by the latter by way